ANNUAL REPORT

1977

Massachusetts Labor Relations Commission

THE COMMONWEALTH OF MASSACHUSETTS
LABOR RELATIONS COMMISSION
1604 LEVERETT SALTONSTALL BUILDING
100 CAMBRIDGE STREET, BOSTON 02202

Michael S. Dukakis
Governor

James S. Cooper
Chairman
Garry J. Wooters
Commissioner
Joan G. Dolan
Commissioner

August 22, 1977

TO:

The Honorable Paul Guzzi
Secretary to the Commonwealth
Boston, Massachusetts

Sir:

We are pleased to submit to you the report of the Massachusetts Labor Relations Commission for fiscal year ending June 30, 1977, in compliance with the provisions of Section 32 of Chapter 30 of the General Laws, and Section 9-0(c) of Chapter 23 of the General Laws, as amended.

LABOR RELATIONS COMMISSION

JAMES S. COOPER, Chairman

GARRY J. WOOTERS, Commissioner

JOAN G. DOLAN, Commissioner

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Approved by Alfred C. Holland, State Purchasing Agent

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I. THE PURPOSE OF THE ANNUAL REPORT

The Labor Relations Commission (the Commission) administers the Public Employee Bargaining Law, Chapter 150E, and the "Baby Wagner Act," Chapter 150A of the General Laws. These laws give employees of state and local government, and employees of private businesses which conduct only intra-state transactions, the right to organize and bargain collectively with their employers.

The Commission conducts elections for collective bargaining representatives, and certifies the results; holds hearings and issues decisions on unfair, or prohibited, labor practice charges; investigates strikes; and considers requests for binding arbitration.

Although the Commission has been in existence since 1937 to administer Chapter 150A, its jurisdiction was greatly expanded in 1964, 1975, and 1973, when the legislature granted collective bargaining rights to municipal, county and state employees respectively. (See Table 1: "How Did Public Employee Bargaining Evolve?")

The purpose of this report is: to explain how the Commission functions; to report important decisions issued this year; and to provide information concerning the agency's workload and productivity.

II. MAJOR ACCOMPLISHMENTS OF THE YEAR

1. Decisions and Orders

Among the important decisions issued this year were two that clarified certain "scope of bargaining" issues. In a case concerning the Boston Teachers Union, the Commission found a residency requirement to be a "mandatory subject of bargaining," or, a subject over which the employer and employee organization have an obligation to bargain. In a case concerning the Town of Danvers and its firefighters, the Commission found "minimum manning," the number of firefighters assigned to a shift, to be a "permissive subject of bargaining," a subject which need not be bargained over unless both sides agree to do so.

When public works employees in Arlington, Walpole and Winchester refused to perform emergency snow removal duties, the Commission determined that emergency overtime cannot be refused when the public safety is at stake. No emergency overtime has since been refused.

2. New Representation Petition Procedures

New procedures for handling representation petitions have reduced the time from the day a petition is filed, to the day an election is held by one half.

3. Major Elections

The University of Massachusetts faculty and staff, and three units of state employees, a total of ten thousand voters, elected collective bargaining representatives in two of the largest elections in Commission history. It was necessary to utilize the entire Commission staff, including attorneys and secretarial staff, to conduct these elections, because of the large number of eligible voters.

4. Increased Productivity

The number of decisions issued and the number of cases disposed of this year have both increased 28 percent. This indicates that the productivity of the Commission has increased, and that cases are being disposed of more rapidly.

III. STRUCTURE OF THE COMMISSION

The Commission is composed of three members, appointed by the Governor, who serve five year terms. One commissioner is designated to act as Chairman. The Commission has the authority to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of the law.

The Executive Secretary supervises employees under the direction of the Commission; prepares agendas for executive session; keeps the Commission informed of all matters pending; and maintains a permanent record of the disposition of any matter discussed and/or voted upon at the executive session. There is also an assistant executive secretary.

A staff of attorneys act as agents of the Commission to: prosecute any inquiry necessary to the performance of its functions; appear for and represent the Commission in any case in court; and to conduct hearings.

Labor Relations Examiners also act as Commission agents to conduct investigations and elections.

The head clerk attends to bookkeeping and administrative matters. Stenographers report formal hearings. Secretaries type decisions, prepare election material, send out notices and perform other clerical and administrative tasks. (See Table 2.)

1. Commissioners and Executive Secretary

In July of 1977, the Commission will have a full complement of three members for the first time in almost a year.

James S. Cooper has served as Chairman since October 1975. Previously, he was an attorney for the Boston law firm of Holtz and Drachman, the Massachusetts Commission Against Discrimination, and the New Jersey Division of Civil Rights. He is a graduate of Rutgers University Law School, where he served as a clinical instructor the year following his graduation.

Garry J. Wooters was appointed to the Commission in November 1976, to replace Henry C. Alarie, who retired last summer. Commissioner Wooters had previously served as counsel to the Commission, as a field attorney for the National Labor Relations Board, and as counsel to the National Association of Government Employees. He is a graduate of Boston University Law School.

Joan G. Dolan was appointed as a Commissioner on July 18, 1977. She replaced Madeline H. Miceli, who retired in January. Dolan was previously an attorney for the Massachusetts Teachers Association, and is a graduate of Northeastern University Law School.

Ann Da Dalt assumed her duties as Executive Secretary when Alfonzo D'Apuzzo retired in March. She had previously served as Assistant Executive Secretary. She was the first woman to receive a Masters in Labor Studies from the University of Massachusetts Labor Relations and Research Center in 1971. She also served as the labor education specialist for the School District of Phildelphia.

2. The Staff

Rita Alberti, secretary, has returned to the Commission, where she previously worked for over 20 years, after a year at the Department of Elder Affairs...Frederick V. "Fritz" Casselman, a graduate of Boston University Law School, has been with the Commission for almost two years ...Patty A. Ciampa has been the Commission's receptionist for three years. She is a graduate of Julie Billiard High School in East Boston, and Burdett College...Mary DiBlasio, secretary, recently joined the Commission after working for a temporary agency for a year...Philip J. Dunn came to the Commission last September from Gregory, Van Lopik and Higle, a labor law firm in Michigan, and is a graduate of Northeastern University Law School. He holds the esteemed position of office softball coach...Sharon Henderson Ellis, a graduate of Suffolk University Law School, also joined the Commission last September. Prior to law school, she served in the Peace Corps in Tunisia...David F. Grunebaum came to the Commission last September after receiving a Masters in Labor Law from New York University. He was previously in private law practice in Boston, and served as a Vista volunteer. He is a graduate of Boston University Law School...Alice T. Hintsa, hearings stenographer, first came to the Commission in 1956. She took time off in between, however, to teach evenings at the Stenotype Institute, to do some freelance reporting, and to have a baby...Stuart A. Kaufman came to the Commission in March 1976, after serving as legal counsel to the legislature's Committee on Public Service. He is a graduate of Boston College Law School, and directs a community band in Brookline...Mary J. Lally, labor relations examiner, has been at the Commission for 16 years. She is a member of the Democratic State Committee, and is active in community politics...Jeanie Lewis, secretary, came to the Commission a year ago from Water Pollution Control. A graduate of the Academy Moderne Modeling and Finishing School, she is expecting her first child in November...James M. Litton is a graduate of New York University Law School. He was counsel to the International Ladies Garment Workers Union in New York before coming to the Commission a year ago...Ralph

Lyons, hearing stenographer, came to the Commission seven years ago after a 14 year career in the railroad industry. He now teaches two nights a week at Touch Shorthand Academy, and has a black belt in judo...Robert B. McCormack, a graduate of Boston University Law School, has been at the Commission since 1972. Prior to that, he was defense counsel for the AMICA Insurance Company, and was in private practice in Hingham...John L. McLaughlin, labor relations examiner, has been with the Commission 11 years. A graduate of Boston College, he was previously with the National Labor Relations Board...Ezaura P. "Dee" Palys, secretary, came to the Commission eight years ago after working in Corporations and Taxation. She lives in Stoughton and has a son who will be a senior at MIT...Joan Quinlan, public information officer, has been with the Commission since September. She graduated from Boston College last year, and spent the intervening summer as an intern for the Patriot Ledger in Quincy...Norener Reid, hearing stenographer, returned to the Commission this year after a short break. She is a graduate of Boston Business School, and Touch Shorthand Academy. She conducts her church choir, and is a member of a community choir... Harvey M. Shrage, assistant executive secretary, graduated from Cornell University's School of Industrial and Labor Relations in 1975. He was the managing editor of the Massachusetts Labor Relations Reporter, and will attend Northeastern University Law School in September...Ourania "Nea" Trypousis, secretary, is a student at Suffolk University, majoring in business education. She works part-time at the Commission between her studies...Arthur S. Weber, head clerk, is a retired senior examiner with the Postal Inspection Service. He has worked for the Town of Braintree, the First National Bank, and the State Police since his retirement...Karen L. Zweig graduated from Northeastern University Law School last year. Prior to attending law school, she prepared multi-media job training materials, and taught elementary school.

IV. CASELOAD AND PRODUCTIVITY

The following is a detailed description of how the Commission performs its four basic functions.

1. Representation Cases

When employees or a union file a petition requesting the Commission to conduct an election for a collective bargaining representative, the Commission must determine the appropriate bargaining unit. This requires a finding as to which employees share a "community of interest" at the bargaining table. Sometimes the employer and the union consent to an appropriate unit, and the Commission approves it. But if they cannot agree, or if they propose an inappropriate unit, the Commission conducts hearings to make a determination. After the unit is defined, the Commission conducts a secret ballot election, and certifies the results. (See chart 3.) A special subset of representation petitions is "clarification petitions," filed by the employee organization or the employer for the purpose of clarifying or amending a recognized or certified bargaining unit.

2. Unfair Labor Practices

There are employment practices prohibited under Chapter 150E

§ 10(a) and (b), and Chapter 150A § 4(a) and (b), which the employer and the employee organization are prohibited from performing. If the employer, or employee organization believes that an employee, employer or employee organization has performed a prohibited practice, they can file an unfair labor practice charge (prohibited practice charge) with the Commission (Chart 4, step A). The Commission conducts an informal conference when such a charge is filed, (step B), at which a Commission agent obtains statements from both parties and attempts to bring about a settlement (step C). The agent reports the results of the conference to the Commission (step D). If a settlement is not reached and the Commission finds that there is sufficient evidence to the charge to warrant a hearing, a complaint is issued (step E), and a formal (step F) or expedited (step G) hearing is held. A hearing officer or Commissioner presides at the hearings. During the hearings, witnesses are called and evidence is introduced. After an expedited hearing, the hearing officer issues a decision (step H), which is appealable to the full Commission (step I). Subsequent to a formal hearing, the Commission issues a decision (step J), which is appealable only to the courts (step K).

3. Strikes

Under Chapter 150E, public employees are prohibited from striking. Thus, when employees engage in or threaten to engage in a strike, the employer may petition the Commission to investigate. The Commission requires that representatives of the employer and employee organization appear for a formal investigation. The Commission "sets requirements that must be complied with." Such an investigation is given highest priority at the Commission.

4. Request for Binding Arbitration

If an employer and an employee organization enter a written contract which does not provide a grievance clause culminating in final and binding arbitration, to be invoked in the event of any dispute concerning the interpretation or application of such written agreement, the Commission may order such arbitration upon the request of either party.

A. Caseload

Between 1966 and 1973, the Commission's caseload grew over 300 percent; since the passage of Chapter 150E in 1973, when state employees were granted collective bargaining rights, the caseload has grown an additional 20 percent.

Table 1 indicates these increases. Table 2 shows the total filings of different types of cases during fiscal year 1977 and 1976. The Commission's case code is explained in the table. One noticeable trend is the rise in unfair labor practice charges filed by the municipal employer against municipal employees. 78 MUPL's were filed this year, compared to 48 last year.

Table 3 indicates that the Commission conducted 173 elections this year. This number does not reflect the size of the elections, however, two of which required the entire staff for over two weeks.

The total number of hearings held, including formal, informal, expedited and other (strike investigations, hearing on challenged ballots, etc.) has increased from 973 in 1976, to 1,091 in 1977, or 11%. The number of expedited hearings has increased from 208 in 1976, to 293 in 1977, or 29% (See Table 4.). The increase in formal hearings represents a large increase in the time stenographers spend reporting hearings and producing transcripts. The increase in expedited hearings, at which testimony is tape recorded, demonstrates how frequently employed and how necessary tape recording equipment is.

Table 5 details the number of strike investigations filed in 1977, the number of actual work stoppages, and the Commission's role in settling the disputes. Although there were 20 strike investigations, the Commission has prevented actual work stoppages in all but eight instances. The following testimony, presented by Chairman Cooper before the Public Service Committee of the General Court, explains the Commission's role during strike investigations:

> "The Commission's focus on strikes has been to get the underlying dispute settled as quickly as possible. We do not view our role as being merely a club to be used by employers to get their employees back to work. We will <u>always</u> order employees back to their jobs; but, we will also look further into the causes of the strike and attempt to get the parties back together and resolve the problem... Of the 47 strike petitions, we have settled either at our offices or after an Order, 31 cases. This represents approximately 65 percent of all the petitions filed. We are proud of this work."
>
> "We regard our role in the Superior Court to be somewhat different than acting as the agent of the employer. The Commission appears before the Court seeking enforcement of its Order. We attempt to guide the Court in deciding what action should be taken. We do not 'represent' the employer, we represent the Commission in serving in the public interest. Thus we define our role as being an aid to the Court in bringing an end to the dispute. We seek to represent a neutral position before the Court, but we always seek to have the Court enjoin the work stoppage."

B. Productivity

The productivity of the Commission staff has increased dramatically this year. The total number of decisions issued has increased from 110 in 1976, to 152 in 1977, or 28%; and the total number of cases disposed of has increased from 447 last year, to 615 this year, a 28% increase.(See Table 6.)

Although 476 cases remain open, all are in process at the Commission. As table 7 indicates, 128, or 27%, have been investigated, are on appeal to the full Commission, or are scheduled for an election. All others have been scheduled for a hearing or investigation.

The best way to illustrate each attorney's workload is to multiply the number of hours spent on an average case, 50 (table 8), by the total number of cases which reached decision, 152. (152 x 50 = 7,600 person hours) 7,600 person hours is over 50% of available attorney time (8 attorneys x 35 hours per week x 50 weeks = 14,000). Immeasurable amounts of time were also spent in disposing of an additional 463 cases by dismissal, settlement or some other means; on court cases; officer of the day work; executive sessions; and other duties. In order to perform all of these duties, attorneys are working well in excess of a regular work week.

V. COURT APPEARANCES

Parties to Commission decisions have the right under Chapter 30A §14 to appeal those decisions within 30 days to the Superior Court. Less than 8% of Commission decisions are appealed, and the majority of those are affirmed by the Courts. Yet, court cases consume a considerable amount of Commission time. Writing a brief can take a week, as can researching a case. Time in court takes anywhere from a few hours to a week; and at least another day can be spent preparing oral argument and attending to miscellaneous details. Although all staff attorneys handle court cases, one attorney spends at least 50% of his time coordinating and supervising court work. 49 cases involving the Commission are now pending before the courts.

VI. ADDITIONAL FUNCTIONS

1. Public Information and Community Relations

The Commission believes that an informed and educated public contributes to the maintenance of stable labor relations. The more knowledgeable employees and employers are of the law, the better they will be able to abide by it, and take advantage of their rights under it. The Commission therefore makes every effort to provide information to the public and to meet with groups of employers and employees.

A public information officer was hired this year to write press releases and answer questions of the media and the general public.

Each day an attorney or examiner is assigned to aide the many people who call or walk into the Commission with labor-related problems. Although the Commission cannot always solve such problems, the "officer of the day" offers advice on where to seek assistance. The Commission established the officer of the day position last year, because it has an obligation to assist the large number of people who do not understand the maze of administrative agencies regulating the employer-employee relationship.

The Commission supplies information to three local professional publications in order to keep practitioners in the field of public sector labor relations informed. The Massachusetts Labor Relations Reporter publishes information concerning decisions, court cases, hearing elections, complaints, and all other activities; Massachusetts Labor Cases prints all Commissions decisions in full; and Massachusetts Lawyers Weekly prints summaries of Commission decisions. Commission decisions are also frequently reported in the Government Employee Relations Report, the Bureau of National Affairs Labor Relations Referency Manual, and the Commerce Clearing House Labor Cases.

The Commission actively participates in the Boston Bar Association's Workshop for Labor Relations Practitioners. Commissioners or staff members have spoken at the Massachusetts Fire Chiefs Conference, the New England Public Employers Association, the Association of Massachusetts Town Counsels and City Solicitors, and the Institute of Industrial Relations at Holy Cross College.

Commission agents travel across the state in an effort to make its services more accessible. Most elections are conducted at the place of employment by a Commission agent. Commission agents also should travel, periodically to the western part of the state to conduct informal, formal, expedited hearings.

2. Union Registration and Union Contract File

Sections 13 and 14 of Chapter 150E require the Labor Relations Commission to maintain a list of employee organizations, and the bargaining units they represent. Required information includes: the name and address of current officers; an address where notices can be sent; date of organization; date of certification; and the expiration date of signed agreements. Each organization must also file an annual report with the Commission containing: "the aims and objectives of such organization, the scale of dues, initiation fee, fines and assessments to be charged to the members, and the annual salaries to be paid officers." This information is reported on standardized forms, which are available to the public.

Public employers are required to file copies of all collective bargaining agreements with the Commission.

FINANCIAL STATEMENT - FISCAL YEAR 1977
July 1, 1976 - June 30, 1977

Received from General Appropriation.....		$449,800.00
Expenditures		
Salaries	$367,250.00	
Special Services	10,635.00	
Supplies	30,500.00	
Travel	4,800.00	
Other Services & Expenses	27,964.00	
Total	$441,149.00	$441,149.00
Balance Unexpended Returned to State Treasury	$ 8,651.00	$ 8,651.00
Income from Sale of Stenographic Records	$ 4,720.00	$ 4,720.00

FINANCIAL STATEMENT - FISCAL YEAR 1976
July 1, 1975 - June 30, 1976

Received from General Appropriation.....		$448,523.00
Expenditures		
Salaries	$331,852.75	
Special Services	29,701.89	
Supplies	39,171.00	
Travel	3,983.40	
Other Services & Expenses	8,768.57	
Total	$423,477.47	$423,477.47
Balance Unexpended Returned to State Treasury	$ 25,045.53	$ 25,045.53
Income from Sale of Stenographic Records	$ 9,000.00	$ 9,000.00

July 1, 1976 - June 30, 1977

PERSONAL SERVICES

Salaries as of June 30, 1977

James S. Cooper	Chairman	$ 23,850.20
Garry J. Wooters	Commissioner	21,850.20
Rita Alberti	Principal Clerk	10,153.00
Frederick V. Casselman	Counsel II	17,113.20
Patricia Ciampa	Sr. Clerk and Typist	7,729.80
Ethel Conrad	Sr. Clerk and Stenographer	7,787.00
Ann Da Dalt	Labor Realtions Examiner	14,482.00
Mary DiBlasio	Sr. Clerk and Stenographer	7,787.00
Philip J. Dunn	Sr. Employee Relations Examiner	13,899.60
Sharon H. Ellis	Labor Relations Examiner	13,899.60
David F. Grunebaum	Counsel II	17,856.80
Alice T. Hintsa	Hearings Stenographer	13,605.80
Stuart A. Kaufman	Counsel II	17,856.80
Sharon Kinney	Jr. Clerk and Stenographer	7,004.40
Mary J. Lally	Labor Relations Examiner	17,394.00
Jean Lewis	Sr. Clerk and Stenographer	8,512.40
James M. Litton	Counsel II	18,600.40
Ralph Lyons	Hearings Stenographer	13,605.80
Robert McCormack	Counsel II	20,831.20
John L. McLaughlin	Labor Relations Examiner	17,394.00
Ezaura P. Palys	Principal Clerk	9,591.40
Norener Reid	Hearings Stenographer	11,921.00
Harvey M. Shrage	Asst. to Executive Secretary	12,420.20
Ourania Trypousis	Sr. Clerk and Stenographer	7,787.00
Maria Walsh	Sr. Bookkeeper	7,787.00
Arthur S. Weber	Head Clerk	9,635.60
Karen Zweig	Sr. Employee Relations Examiner	13,899.60
		$273,442.20

Vacant Positions		
Executive Secretary	$18,033.60	
Administrative Secretary	11,078.60	
Commissioner	21,850.20	
	$50,962.40	$ 50,962.40
		$324,404.60

July 1, 1975 - June 30, 1976

PERSONAL SERVICES

Salaries as of June 30, 1976

Robert B. McCormack	Counsel II	$ 19,237.00
James S. Cooper	Chairman	23,000.00
Alfonso M. D'Apuzzo	Executive Secretary	21,769.00
Ralph Lyons	Hearings Stenographer	12,334.40
Margaret Higgins	Hearings Stenographer	12,755.60
Shirley DeMarco	Principal Clerk	7,618.00
Ann Da Dalt	Labor Relations Examiner	13,049.40
John L. McLaughlin	Member, Labor Relations Commission	16,543.80
Henry C. Alarie	Member, Labor Relations Commission	21,000.00
Madeline H. Miceli	Member, Labor Relations Commission	21,000.00
Arthur Weber	Head Clerk	8,460.40
James Litton	Counsel II	16,263.00
Frederick Casselman	Sr. Employee Relations Examiner in lieu of Labor Relations Examiner	13,049.40
Mary Lally	Labor Relations Examiner	16,543.80
Ezaura P. Pałys	Sr. Clerk and Stenographer	8,387.60
Alice Hintsa	Hearings Stenographer	12,755.60
Pearl Grunin	Sr. Clerk and Typist	8,387.60
Patricia Ciampa	Jr. Clerk and Typist	6,154.20
Ourania Trypousis	Sr. Clerk and Typist	6,665.60
Deidra Thomas	Sr. Clerk and Typist	6,665.60
Jean Driscoll	Asst. to Executive Secretary	11,570.00
Harvey Shrage	Sr. Employee Relations Examiner	13,049.40
David Abel	Counsel II	16,263.00
Karl Frieden	Sr. Bookkeeper	6,936.80
Kathryn Noonan	Counsel II	16,263.00
Stuart Kaufman	Counsel II	16,263.00
Jean Lewis	Sr. Clerk and Stenographer	6,936.00

VIII. SUMMARY OF DECISIONS

The Public Employee Bargaining Law will enjoy its third anniversary on July 1, 1977. The statute can hardly be called the "new" collective bargaining law any longer. The Labor Relations Commission has issued over 500 written decisions interpreting General Laws Chapter 150E. This summary of cases is a compendium of many of the Commission's decisions. With the publication of Commission decisions by the Massachusetts Labor Relations Reporter, members of the public and the bar have immediate access to the Commission's interpretation of the law. This summary should make research and advice easier for everyone.

The cases discussed below are grouped under numbered sections which correspond to the sections of Chapter 150E.

Section 1 Definitions

Employee

The term "employee" has been broadly interpreted to encompass all those individuals employed by a public employer, except those specifically excluded by statute. City of Fitchburg, 2 MLC 1123 (1975). Thus, the Commission has extended coverage of the Law to regularly employed part-time employees, County of Plymouth, 2 MLC 1106 (1975); Grafton School Committee, 2 MLC 1271 (1976), including part-time employees who are full-time students. Quincy Library Department, MCR-2434, 3 MLC ___(1977). Call firefighters who do not work regular hours and who are under no obligation to respond to every alarm are also considered employees. Town of Lincoln, 1 MLC 1422 (1975). Probationary employees are entitled to protection under the Law, City of Fitchburg, supra, as are CETA employees.City of Springfield,

2 MLC 1233 (1975). The Commission has also determined that hospital interns, residents and fellows are employees, in spite of NLRB cases to the contrary. City of Cambridge, 2 MLC 1450 (1976); Worcester City Hospital, 3 MLC 1290 (1976).

Managerial Employees

Under the Law, employees shall be designated as managerial employees only if they (a) participate to a substantial degree in formulating or determining policy, (b) assist to a substantial degree in the preparation for or conduct of collective bargaining on behalf of a public employer, or (c) have a substantial responsibility involving the exercise of independent judgment of an appellate responsibility not initially in effect in the administration of a collective bargaining agreement or in personnel administration.

Decisions of the Commission designating managerial employees are based on the actual duties and responsibilities of employees, not those which the employer wishes to have the employee perform in the future. County of Worcester, 3 MLC 1273 (1976). A position must be funded and filled before the issue of managerial exclusion may be raised; Town of Wellesley, 2 MLC 1443 (1976). The exercise of mere supervisory authority is insufficient for excluding an employee as managerial; University of Massachusetts, 3 MLC 1179 (1976); Town of Wareham, 2 MLC 1555 (1976). Principals, assistant principals, and department chairpersons are not per se managerial employees and may engage in collective bargaining; school administrators who have only advisory authority in educational policy, have no substantial discretion in budget formulation, have never exercised appellate responsibility in the grievance procedure and have only participated on isolated occasions in collective bargaining, are not managerial employees; Wellesley School Committee, 1 MLC 1389 (1975). Administrators who make actual final policy decisions which are significant in relation to the public enterprise are managerial employees; Masconomet Regional School District, 3 MLC 1034 (1976). Administrators who review the contract proposals in the teacher's unit in order to prevent a possible negative impact on the administrators do not substantially participate in collective bargaining; Town of Holbrook, 1 MLC 1468 (1975). Evaluation of subordinate employees

is not sufficient to make a managerial employee, where the evaluation is not final and of limited impact in personnel decisions; New Bedford School Committee, 2 MLC 1215 (1975). Participation in any one of the disjunctive requirements must be substantial; Taunton School Committee, 1 MLC 1480 (1975), Lee School Committee, CAS-2035, 3 MLC ___ (1977).

Confidential Employees:

Section 3 excludes confidential employees from coverage under the Law. Section 1 provides that employees shall be designated as confidential "only if they directly assist and act in a confidential capacity to a person or persons otherwise excluded from coverage under" the Law. The Commission applies the confidential exclusion so as to preclude as few employees as possible from collective bargaining while at the same time establish an employer to operate its business. Silver Lake Regional School Committee, 1 MLC 1240 (1975).

Many of these cases have involved the issue of whether clericals who assist school administrative personnel are confidential employees. Secretaries were excluded when they regularly typed contract proposal for the employer's use in negotiations. Silver Lake Regional School Committee, supra. Conversely, employees have not been excluded merely because they have access to sensitive or confidential material such as financial data and personnel records. Wellesley School Committee, 1 MLC 1389 (1975). Secretaries to school superintendents and school committees have generally been excluded. See Silver Lake Regional School Committee, supra; Belchertown School Committee, 1 MLC 1304 (1975); Fall River School Committee, CAS-2136, 3 MLC ___ (1977). Similarly in the University of Massachusetts, a dean's reliance on department chairmen as a conduit to and from the faculty does not preclude the chairman from collective bargaining as confidential employees. Employees may directly assist excluded employees without assisting them in a confidential capacity. University of Massachusetts, 3 MLC 1179 (1976).

Section 2 Employee Right to Organize and Bargain Collectively

Section 2 provides that "Employees shall have the right to self-organization and the right to form, join or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing." Furthermore, this section provides employees with the right "to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint or coercion."

Protected activities include: picketing, City of Fitchburg, 2 MLC 1123 (1975); editing and publishing a union newsletter, Mount Wachusetts Community College, 1 MLC 1496 (1975); making pro-union speeches, Mount Wachusetts Community College, supra; initiating a grievance under a collective bargaining agreement, Town of Halifax, 1 MLC 1486 (1975); distributing pro-union literature, Southern Worcester County Regional Vocational School District, 2 MLC 1488 (1976); prosecuting grievances not within the context of a contractual grievance procedure, Harwich School Committee, 2 MLC 1095 (1975); non-disruptive picketing of School Committee meetings, and of the homes of School Committee members, and distribution to parents of leaflets in support of the employees' organizational or bargaining objectives, Southern Worcester County, supra; insisting upon the presence of a union representative at an investigatory interview reasonably perceived as potentially leading to discharge, Commonwealth of Massachusetts, Department of Public Welfare, SUP-2067 3 MLC _____ (1977); serving as union officer and member of union negotiating committee, and protesting the employer's unilateral changes in working conditions, Town of Sharon, 3 MLC 1060 (1976); seeking the assistance of the union, Commonwealth of Massachusetts, 2 MLC 1400 (1976); distributing leaflets and collecting signatures on a petition as an adjunct to the formal grievance procedure, City of Boston, 2 MLC 1101 (1976); and soliciting union authorization cards, and serving as union steward, Town of Wareham, 3 MLC 1334 (1976).

Improper tactics, such as acts of vandalism, are not protected activity. City of Fitchburg, 2 MLC 1123 (1975). Conduct which is physically intimidating, egregious or disruptive of the employer's business is also unprotected. Harwich School Committee, 2 MLC 1095 (1975).

In Southern Worcester County Vocational School District, supra, the Commission concluded that limited picketing at the School Committee members' places of employment was protected activity under this section. It was also decided that teachers had the right to distribute non-inflammatory leaflets to visiting parents of school children.

In determining whether employees' concerted activity is protected, the Commission looks to both the nature of employees' conduct and whether they made reasonable efforts to utilize the available grievance procedure. Employees may not circumvent their bargaining representative to negotiate directly with the employer. Even though the grievance procedure had not been exhausted, a leafletting and picketing compaign in support of a union grievance to improve conditions at Boston City Hospital was protected activity because it was not unreasonably disruptive of, nor indefensibly disloyal to the employer's operation. City of Boston, 3 MLC 1101 (1976).

Section 3 Determination of Appropriate Bargaining Units

The Commission's Discretion

Within certain statutory limits, the Commission has broad discretion in determining appropriate bargaining units. The Legislature has mandated that the Commission afford due consideration to three criteria: community of interest; efficiency of operations and effective dealings; and safeguarding the rights of employees to effective representation. These criteria are balanced by the Commission to serve the fundamental statutory objective of providing for stable and continuing labor relations.

The Largest Unit Practicable

The Commission has found that broad, comprehensive units, rather than small, fragmented units best facilitate stable and continuing labor relations. Generally the Commission seeks the largest unit practicable provided that there is sufficient community of interest among the employees included. Town of Athol, 2 MLC 1062 (1975). The 'touchstone' of community interest is a demonstration that the requested employees comprise a coherent and homogeneous group with distinct employment interests apart from excluding employees, sufficient to warrant separate representation. Thus, the professional faculty of the statewide network of community colleges were placed in one overall unit rather than in individual units at each campus. Community College, 1 MLC 1426 (1975). In Boston School Committee, 2 MLC 1557 (1976) the Commission combined two separate Supervisory units into one. Similarly, the Commission ruled that a Municipal Public Water Department should contain a single bargaining unit rather than a unit for each of the subdepartments. Town of Cohasset, 1 MLC 1184 (1974). However, a hearing officer held that teacher aides paid pursuant to federal or state grants were excluded from a unit of aides paid directly by the employer because they were selected and supervised differently and because they had different wages, benefits and methods of payment. City of Fall River, 3 MLC 1320 (1976). See also Town of Burlington, 3 MLC 1350 (1977).

Balkanization of bargaining units is not favored by the Commission. Thus the Commission refused to approve the creation

of a separate unit comprised of three attendance supervisors and two audio visual technicians, reasoning that such employees could better be placed in existing bargaining units with which they shared a community of interest. Pittsfield School Committee, 3 MLC 1493 (1977). See also Town of Dartmouth, 1 MLC 1257 (1975); Town of Harwich, 1 MLC 1376 (1975); City of Quincy, 3 MLC 1012 (1976); Barnstable County, 3 MLC 1444 (1976); City of Lowell, 3 MLC 1468 (1977); Quincy Library Department, MCR-2434, 3 MLC ____(1977).

Other Than Full-Time Employees

In determining appropriate units, the Commission has also dealt with employees who were not full-time workers. In Town of Lincoln, 1 MLC 1422 (1975), the Commission refused to include call firefighters in the unit with full-time firefighters. Although reaffirming the call firefighters' status as employees under the Law, the Commission concluded that they lacked a community of interest with regular firefighters who had significantly different bargaining concerns. Furthermore, the instability of the call firefighter work force and the extreme variations in the individual responses to fires compelled the conclusion that a unit of Lincoln call firefighters could not appropriately exercise collective bargaining rights. However, in Town of Burlington, 3 MLC 1350 (1977), a hearing officer found a group of eleven part-time traffic supervisors who worked 38 weeks a year to be an appropriate unit because the employees' hours and weeks of duty were clearly defined and because they enjoyed steady employment. Similarly, a unit composed entirely of evening school teachers was held to be appropriate in Pittsfield School Committee, 2 MLC 1523 (1976). The differences between evening and day school teachers were too significant to justify the inclusion of both groups into one unit and the needs of the seventy evening school teachers for effective representation were held to outweigh the concerns of the School Committee for efficiency of operations. At the University of Massachusetts, however, department chairmen, part-time faculty, librarians, and coaches were included in a bargaining unit with full-time, "tenure track" faculty. University of Massachusetts, 3 MLC 1179 (1976). In Town of Hamilton, 2 MLC 1512 (1976), a hearing officer concluded that part-time patrolmen should be excluded from the unit of full-time police because of substantially different training and performance expectations, basically different bargaining concerns, and radically different hours.

In dealing with seasonal personnel,the Commission looks closely at their turnover rate. In Bay State Harness Horse Racing and Breeding Association, 2 MLC 1340 (1976), the Commission noted that 70% of the seasonal employees involved had worked for the employer for at least two consecutive seasons. This percentage was considered high enough to warrant the exercise of collective bargaining rights. In contrast, see City of Gloucester, 1 MLC 1170 (1974), where the Commission found that summer employees did not constitute an appropriate unit because of the unique funding problems of municipal government.

When dealing with school systems, the Commission generally places teachers and administrators in separate units. The Commission will approve a combined teacher-supervisory unit, however, where there are few employees involved. See Chicopee School Committee, 1 MLC 1195 (1974).

The statutory criteria of Section 3 are applied with considerable flexibility. In City of Worcester, 1 MLC 1034 (1974), a vocational school librarian was placed in a unit with vocational school teachers rather than in one with other school librarians; not only was her job dissimilar in many respects from that of other librarians; but she had more student contact than most librarians. In Saugus School Committee, 2 MLC 1412 (1976) the Commission found that clerical employees should be severed from an already existing unit of custodial and cafeteria employees. The homogenity of the clerical group, the history of collective bargaining, the separateness of the group while in the unit, and the degree of integration of employees in the broad unit were among the factors that caused the Commission to recommend the unit determination.

When the Commission finds more than one proposed unit to be appropriate, the desires of the employees become a factor. Thus in Weymouth School Committee, MCR-2427, MCR-2428, 3 MLC____ (1977), the hearing officer ordered an election in which the clerical employees could choose to be represented in a unit by themselves or in a comprehensive unit together with the teacher aides.

When the employer and the employee organization are in agreement as to the composition of a bargaining unit, the Commission will generally adopt the agreement unless it is contrary to law or public policy or the rules and regulations

of the Commission. Town of Wrentham, MCR-2447. However, in City of Lowell, 3 MLC 1260 (1976), aff'd, MCR-2379, 3 MLC ____ (1977), where all parties agreed that a separate unit of accountants was appropriate, the Commission nevertheless affirmed a hearing officer's dismissal of the petition on the basis of the inappropriateness of the proposed unit.

If a party has contractually agreed to the inclusion of an employee in a bargaining unit, the party may be estopped for at least the duration of the contract from arguing for the employee's exclusion. City of Somerville, 2 MLC 1546 (1976), Pittsfield School Committee, 3 MLC 1082 (1976). But see City of Medford, 3 MLC 1238 (1976), reversing 2 MLC 1328 (1976), where the Commission voided a certification based upon such factors as employer confusion and inappropriateness of the agreed-to unit, notwithstanding the consent of all parties to the unit description.

Separate Supervisory Units

As noted above, the Commission generally favors units of supervisors separate from rank and file units, e.g. school administrators are normally separate from the teachers. Chicopee School Committee, 1 MLC 1195 (1974). When presented with a petition to sever superior officers from existing overall units in police and fire departments, the Commission looks to such factors as the supervisory authority and duties of the personnel involved, the desires of the employees (although these desire are not controlling), conflicts of interest, special negotiating concerns, and the size of the departments. See City of Everett, 3 MLC 1372 (1977); Town of Dedham, 3 MLC 1130, 3 MLC 1332 (1976); City of Cambridge, 2 MLC 1027 (1975).

Section 4 Procedures For Determining Exclusive Bargaining Representative, Contract and Certification Bars To An Election

Notice

Commission rules require that all interested parties be given notice of representation proceedings. MLRC Rules, Art. II, §6. The petitioning employee organization and the employer have a joint obligation to provide the Commission with information regarding other organizations that purport to represent any employees affected by the petition. City of Quincy, CAS-2062, 3 MLC ___ (1976).

Accretion and Clarification of Existing Bargaining Units

The Commission has broad power to investigate and decide representation questions arising out of existing units. See Art. II, Sections 17, 18 of the Commission's Rules and Regulations; City of Boston, 2 MLC 1353 (1976). This includes the power to exclude employees from an existing unit who are managerial, Wellesley School Committee, 1 MLC 1389 (1975), confidential, Silver Lake Regional School Committee, 1 MLC 1240 (1975), or otherwise inappropriately included, City of Boston, 2 MLC 1353 (1976), City of Gloucester, CAS-2147, 3 MLC ___ (1977). However, if a party has contractually agreed to the inclusion of an employee in a bargaining unit, that party may be estopped, at least for the life of the agreement, from arguing for the employee's exclusion. City of Somerville, 2 MLC 1546 (1976).

A petition for clarification, brought pursuant to Art. II, §17 of the Rules and Regulations, is also appropriate to add to an existing bargaining unit job classifications which are natural accretions to the unit. City of Worcester, 1 MLC 1034 (1974).

The Commission will allow the accretion if it comports with the intent of the parties at the time of certification or recognition; the new titles must necessarily share a community of interest with the existing unit. City of Somerville, 1 MLC 1234 (1975). A petition for clarification is not appropriate where the affected job title was in existence at the time of certification or recognition and was excluded from the unit by the parties. Town of Agawam, 2 MLC 1367 (1976) (Hearing Officer's Decision). Similarly, if the employee in the disputed job classification functions in a manner similar to employees previously excluded, a petition for clarification will

be dismissed; the Commission examines job functions, not merely job titles. Peabody School Committee, CAS-2053, 2057, 3 MLC___ (1977). A clarification petition is appropriate to change unit placement if the function and job duties of the disputed title have changed significantly since certification or recognition. Amesbury School Committee, CAS-2081, 3 MLC___ (1977) (Hearing Officer's Decision).

The Commission may order a self-determination election in rare cases where accretion is inappropriate because the disputed job title was previously excluded; employees in the disputed titles are given the choice of being represented by the incumbent in an existing unit or of not being represented in any unit. A self-determination election may be ordered where the petition is accompanied by a sufficient showing of interest, where there are compelling community of interest considerations, where the petition seeks to include all such employees, and where the reasons for the original exclusion no longer pertain. City of Quincy, MCR-2434, 3 MLC___(1977).

Contract and Certification Bars to an Election

Proceedings under Section 4 of the Law have often involved the contract bar doctrine, which prohibits the direction of an election, except for good cause, if a valid collective bargaining agreement is in effect. The doctrine is discretionary. It will be applied or waived depending on the facts of the case with a view toward fairness for employer and employee alike and stability of bargaining agreements. Easton School Committee 2 MLC 1111 (1975).

A contract will not operate as a bar where there is a fundamental intra-union dispute at the international level accompanied by a related disaffiliation at the local level. Such "schism" is essential. The Commission has refused to waive the contract bar even where the vast majority of unit employees have expressed clear dissatisfaction with their chosen representative. See City of Worcester, 1 MLC 1069 (1974), City of Salem 1 MLC 1172 (1974). A contract will not operate as a bar even though the parties agree to continue its terms during negotiations. University of Mass, 2 MLC 1001 (1975)

A successor contract, negotiated and ratified prior to the open period under the existing contract will not bar a petition which would be timely had the new agreement not been negotiated. Town of Saugus School Committee, 2 MLC 1414 (1976).

A contract must be signed by all parties to operate as a bar. Even when the terms were agreed on, the parties had agreed to sign, the contract was in near final form and some provisions had already been implemented, the contract was held ineffective as a bar because it was unsigned. Town of Maynard, 2 MLC 1253 (1975). See also, Hearing Officer's Ruling on Motion to Dismiss in Somerville School Committee, 2 MLC 1335 (1976).

Generally, pursuant to the certification bar, no election will be directed in a unit within one year of a prior election. However, a rival petition for certification will be processed by the Commission even though filed prior to the expiration of the year if the election is conducted after the statutory twelve-month period. There must be no contract bar. City of Gardner, 1 MLC 1115 (1974). A petition must be received at the Commission's office within the 180 to 150 day open period prior to the expiration of the existing contract. City of Springfield, 1 MLC 1446 (1975).

Election Petitions

Article II, Section 6 of the Commission's Rules and Regulations requires that a petitioner be designated as the exclusive representative by 30 percent of the employees in the proposed unit. The Commission's determination of the showing of interest is an administrative determination and is not subject to challenge. Duxbury School Department, 1 MLC 1020 (1974). The Commission may find that the 30 percent requirement is met if the petitioner based its showing on the employer's statement of the number of employees in the unit even though the employer's statement was inaccurate. Commonwealth of Massachusetts (Unit 4), SCR-2100, 3 MLC ___ (1977). An employer representation petition will be dismissed where there is no employee organization seeking recognition or claiming majority status in the unit sought. Commonwealth of Massachusetts, 1 MLC 1190 (1974). An employee petition for decertification must be in a unit co-extensive with the certified or recognized bargaining unit. City of Lynn, 2 MLC 1541 (1976). A petition, however, may be amended prior to or at the representation hearing, if the amended petition does not seek a substantially different unit. Commonwealth of Massachusetts (Unit 4), SCR-2100, 3 MLC ___, (1977).

The Commission exercises wide discretion in the manner and method of conducting representation elections. Community Colleges, 2 MLC 1146 (1975). Thus the Commission may utilize on-site or mail ballot elections. Furthermore, the Commission

has the exclusive power to determine the name of the organization appearing on the ballot in order to insure that the ballot is not confusing to the voters. Department of Public Welfare, 1 MLC 1127 (1974). The Commission's certification runs to the employee organization appearing on the ballot. Commonwealth of Massachusetts (Units 1, 2, 6, 8 and 9), 2 MLC 1322 (1976).

An employee organization's failure to comply with the filing requirements of sections 13 and 14 of the Law does not require that an election be set aside. In Commonwealth of Massachusetts, 2 MLC 1322 (1976), the Commission conditioned certification upon the expeditious compliance of the petitioner with the Law's reporting provisions.

The Commission may postpone determinations of managerial exclusions until after the election has been conducted. The claimed managerial employees will vote under challenge and the Commission will not count their ballots until the challenges are resolved. Community Colleges, 2 MLC 1146 (1975). The Commission may postpone taking evidence on managerial status until after the election. Commonwealth of Massachusetts (Unit 6), SCR-2103, 3 MLC ___, (1977). The Commission allows non-employees to act as observers at an election. City of Quincy, 1 MLC 1161 (1974).

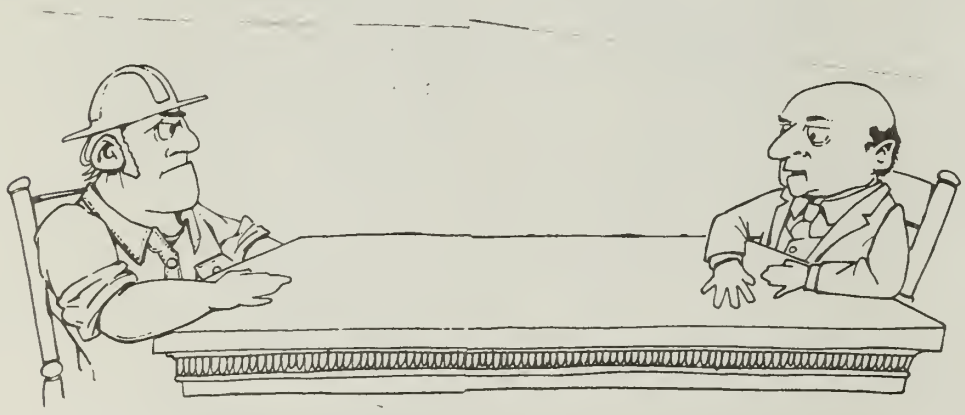
A party must file its objections to the conduct of an election within five days of the count. The Commission will not conduct a post-election hearing if the objections to the election raise no legally significant issues. Town of Rockland, 1 MLC 1217 (1974). The Commission will not consider matters raised as objections to the election if they should have been raised at the pre-election representation hearing. Town of Rockland, supra. A party seeking to set aside an election because of conduct occurring prior to or during the course of the election must furnish evidence that the conduct had a substantial impact on the election results. City of Boston, 2 MLC 1275 (1976). Only a party in interest can object to an election. Boston School Committee, 3 MLC 1043 (1976).

Where one of the parties to an election submitted an official ballot with partisan election propaganda superimposed on it, the Commission found that such propaganda and its timing close to the election was cause to set that election aside. Commonwealth of Massachusetts, 2 MLC 1261 (1976). The Commission will not overturn an election on the ground of misrepresentation unless a party has substantially misrepresented a highly material fact the truth of which lies within the special knowledge of the party making the misrepresentation. An election will

not be set aside if the voters have independent knowledge with which to evaluate the misrepresentation or if there was no substantial impact on the election. Commonwealth of Massachusetts, 3 MLC 1067 (1976). The Commission will not set aside an election because of minimal inaccuracies in the voter eligibility list. An employer's good faith and substantial effort to provide the list will suffice. City of Quincy, 1 MLC 1161 (1974).

Voluntary Recognition

Article II §5.2 of the Commission's Rules and Regulations, provides for voluntary recognition of an employee organization by the employer. In order to enter into a recognition agreement the employer must: (1) have a good faith belief in the employee organization's majority status in the unit; (2) post a notice, of intention to recognize the employee organization, for a period of twenty days prior to recognition; and,(3) set forth in writing in the agreement the specific unit involved. No recognition may be granted where, during the posting period, a valid representation petition, raising a question concerning representation, has been filed with the Commission.



Section 5 Duty of Fair Representation

Section 5 of the Law provides that the exclusive representative "...shall be responsible for representing the interest of all [unit] employees without discrimination and without regard to employee organization membership."

The Commission has interpreted this section to impose upon employee organizations a duty to represent fairly all members of the unit in all phases of collective bargaining, including both the negotiating of contracts and the processing of grievances. A breach of this duty is considered a prohibited practice. Framingham School Committee, 2 MLC 1292 (1976). In that case, the Association was found to have breached its duty of fair representation by withdrawing a meritorious grievance without informing the grievant or his attorney, and by refusing to bear one-half the cost of arbitration as provided in the collective bargaining agreement.

Although a union may not arbitrarily ignore a meritorious grievance or process it in a perfunctory manner, a union need not formally process every grievance filed if it in good faith determines that a grievance is without merit. Local 285, SEIU, SUPL-2006, 3 MLC ____ (1976).

In a recent Hearing Officer's Decision presently on appeal, the Hearing Officer noted that a public employee's right to due process in some situations may require that unions in the public sector be held to a higher standard in representing their constituents than private sector unions. Robert W. Kreps, 3 MLC 1087 (1976).

Section 6 Duty and Scope of Bargaining

Section 6 of the Law imposes a duty on both the employer and the exclusive representative of the employees to negotiate in good faith about wages, hours, standards of productivity and performance and any other terms and conditions of employment. This obligation does not compel either party to agree to a proposal or make a concession. An employer cannot refuse to bargain because a prohibited practice charge has been brought against him. Commonwealth of Massachusetts, SUP-2078B, 3 MLC ____ (1976).

Good faith negotiations mean that both sides have a sincere desire to reach agreement, as evidenced by the totality of their conduct. City of Chicopee, 2 MLC 1071 (1975). The existence of agreement on a number of major issues may be sufficient to negate an inference of bad faith arising from insistence to impasse on one specific issue. King Philip Regional School Committee, 2 MLC 1393 (1976).

While the Law does not compel agreement on any issue, neither can one party reject the other's proposals without presenting counter-proposals, City of Chelsea, MUP-2386, 3 MLC ____ (1977), or refuse to discuss modification of contract language or changes in existing benefits. Town of Saugus, 2 MLC 1480 (1976).

Since the environment in which negotiations take place is so important to the proper functioning of the bargaining process, the Commission has found that insistence to the point of impasse on the issue of bargaining in open session (i.e. bargaining meetings open to the public) violates the Law. Town of Marion, 2 MLC 1256 (1975); Town of Norton, 3 MLC 1140, (1976); Town of Winchendon, 3 MLC 1316 (1976). However, this does not preclude negotiations in a public forum if the parties so agree, City of Attleboro, 3 MLC 1408 (1977), nor does it mean that the parties may have no access to the press, unless that privilege is voluntarily foregone or overriden by statute, so long as the character, timing and quantity of statements to the press comports with good faith. Town of Stoneham, 3 MLC 1355 (1977).

The duty to bargain also encompasses the obligation on the part of the employer to negotiate with the employee representative before altering wages, hours or working conditions, City of Chelsea, 1 MLC 1299 (1975); Town of Marblehead,1 MLC 1140 (1974), even if the change may be one welcomed by the union. City of Chicopee, 2 MLC 1071 (1975). Failure to negotiate before instituting a change violates the Law regardless of the good faith of the employer, Town of Natick, 2 MLC 1086, 1091 (1975), where the following elements are present:

1. a pre-existing condition of employment;

2. a unilateral alteration;

3. an effect on a mandatory subject of bargaining, Town of North Andover, 1 MLC 1103, 1106 (1974).

The change violates the Law where its scope and impact are more than very minimal. Worcester School Committee, MUP-2303, 3 MLC ____ (1977).

A union has an obligation to object to a unilateral change on the part of the employer in a timely fashion or the Commission may find that it has waived its right to bargain about the matter, City of Lowell, 3 MLC 1001 (1976), providing that its waiver was a knowing and conscious one. City of Boston, 3 MLC 1450 (1977). The filing of a charge with the Commission soon after the

unilateral change will be viewed as an objection to the unlawful act and preclude the finding of a waiver. City of Everett, 2 MLC 1471 (1976).

The subjects about which the employer and employee representative must bargain are those which have a direct impact on terms and conditions of employment. Town of Danvers, MUP-2292, 2299, 3 MLC ____ (1977). The Commission has found that the practice of granting union officials full time off for union business, City of Boston, 3 MLC 1450 (1977); procedures for promotion, Town of Danvers, MUP-2292, 2299, 3 MLC ____ (1977); initial salary levels for newly created bargaining unit positions, Melrose School Committee, 3 MLC 1299 (1976); job duties, Town of Danvers, supra; assignment of unit work to non-unit personnel, Town of Danvers, supra; and residency requirements for employees, Boston School Committee, MUP-2503, 2528, 2541, 3 MLC ____ (1977), are mandatory subjects of bargaining. If the parties stipulate that certain subjects are mandatory, a refusal to bargain "on the record" about them violates the duty to bargain in good faith. Local 841, International Association of Firefighters, 3 MLC 1378 (1977). Permissive subjects of bargaining include the number of personnel per shift, Town of Danvers, supra.

Alternatively, there are some subjects which the parties may not include in their agreements, such as automatic wage increases for one unit of employees conditioned on the wage increases bargained by employees in other units. Medford School Committee, 3 MLC 1413 (1977). However, the Commission has distinguished this issue from a lawful agreement to reopen a contract in a unit if other units negotiate a more favorable settlement. Medford School Committee, supra.

Once an agreement is negotiated, a negotiation subcommittee has a duty to support the proposals it has agreed to before the full committee it represents in collective bargaining. Spencer-East Brookfield Regional School Committee, 3 MLC 1400, (1977) (H.O. Decision). Agreement by the employer brings with it the duty to request funding and to otherwise facilitate the implementation of the agreement's provisions, including funding from existing sources unless otherwise specified in the agreement. Worcester School Committee, 2 MLC 1283 (1976). Absent a valid claim of statutory or legal impediment, failure to request funding constitutes a per se violation of the Law. City of Chicopee, 2 MLC 1071 (1975); Mendes v. Taunton, 1974 Mass. Adv. Sh. 1291, 315 N.E. 2d 865 (1974).

Section 7 Maximum Term for Collective Bargaining Agreement

A collective bargaining agreement which automatically continues beyond three years unless either party proposes to change it, does not violate §7, which puts a three year limit on contracts. By not proposing changes the parties are, in effect, agreeing to a new contract. Town of Burlington, MUP-2370, 3 MLC ____(1977).

Section 8 Final and Binding Arbitration

When requested to do so by an employer or employee organization, the Commission may order binding grievance arbitration pursuant to Section 8 of the Law upon finding two threshold facts. First, the parties must have executed a written agreement which does not provide for the resolution of grievances through binding arbitration. Second, there must be a dispute concerning the interpretation or application of that written agreement. Town of Wayland, 3 MLC 1367 (1977).

In contrast, where the parties to a contract have agreed upon the binding arbitration of the dispute in question a Section 8 order is not appropriate. Town of East Longmeadow, 3 MLC 1047 (1976). In that case, the party seeking to enforce the contractual arbitration provision should proceed in Superior Court pursuant to G.L. chapter 150C. See Town of Danvers, 1 MLC 1231 (1974).

A Section 8 order of binding arbitration is appropriate even though the collective bargaining agreement has expired subsequent to the grievance. Board of Trustees of State Colleges (Worcester State College), 1 MLC 1474 (1975). But where there is no written contract in effect at the time of the alleged contract breach, a Section 8 order will not issue. Town of East Longmeadow, supra.

If an employee elects to arbitrate a grievance involving suspension, dismissal, removal or termination, that arbitration is the exclusive procedure available to the employee. But where the grievance does not involve one of those issues, an employee organization may obtain a Section 8 order even though the aggrieved employee is pursuing alternate remedies. Board of Trustees of State Colleges (Worcester State College), Supra. See also Town of Wayland, supra.

When it receives a request for binding arbitration, the Commission does not itself interpret the collective bargaining agreement. The Commission will order arbitration so long as the dispute is "arguably arbitrable". Board of Trustees of State Colleges (Worcester State College), supra. Where no arbitrator could reasonably concur with the petitioner's position, however, the Commission will not order futile arbitration. Sturbridge School Committee, 1 MLC 1381 (1975).

An employee organization may, with regard to a specific and narrow class of disputes, expressly waive its Section 8 right to request binding arbitration. Worcester School Committee, 2 MLC 1174 (1975). The waiver must be clear and unmistakable.

Upon receipt of a request for binding arbitration, the Commission notifies all interested parties. A period of ten days from receipt of the notification is allowed for an opposing party to set forth in writing any objections to the request. If the party fails to submit objections to the request for binding arbitration and the Commission determines that an order for binding arbitration should issue, such orders will not provide for a show cause hearing. If objections to the request for binding arbitration are timely filed, the Commission shall determine on a case by case basis whether an order for binding arbitration will issue and if an order issues, whether it will provide for a show cause hearing. Board of Trustees of State Colleges (Fitchburg State College), 2 MLC 1344 (1976).

Section 9 Impasse; Mediation; Fact-finding

Section 9 establishes a mechanism for the resolution of bargaining impasse through mediation, and, if necessary, fact-finding, procedures. Under sections 10(a)(6) and 10(b)(3), it is a prohibited practice to refuse to participate in good faith in mediation and fact-finding. The consistent failure of a public employer to attend mediation sessions after receiving timely notice of such meetings constitutes a per se violation of the letter and spirit of the Law. Town of Rockland, 3 MLC 1359 (1977). A public employer may not refuse to bargain even after an impasse where there has been a passage of time and the union requests the resumption of negotiations. Lawrence School Committee, 3 MLC 1304 (1976). The request for renewed

bargaining need not state the nature of the concessions the party is willing to make. Lawrence School Committee, supra.

The continued refusal by a public employer to comply with the procedural grievance arbitration provisions of a duly executed contract constitutes a per se violation of its duty to participate in good faith in those procedures. City of Chelsea, 3 MLC 1169, affirmed 3 MLC 1384 (1977).

The fact-finding procedure should be a fluid one inasmuch as it is designed to encourage settlement. Therefore, mere alteration of proposals during the fact-finding process is not a prohibited practice. Local 1009, International Association of Fire Fighters, 2 MLC (1975). Neither is it a breach of the duty to participate in good faith to release information to the media at its request, if the release neither frustrates fact-finding nor contributes significantly to a deadlock of negotiations. Local 1099, IAFF, supra. This assumes, of course, that the parties had not established ground rules concerning news releases during negotiations. Town of Maynard, 2 MLC 1141 (1975), affirmed 2 MLC 1281 (1976).

The withdrawal of an improved offer prior to fact-finding and retreat to a less favorable position, is evidence of bad faith. Town of Saugus, 2 MLC 1480 (1976). Egregious misrepresentation of facts to the fact-finder may constitute a prohibited practice. Factors which may mitigate against such a finding include: complexity of the issues; commission of a similar error by the complaining party; opportunity for rebuttal; and absence of reliance by the fact-finding upon the misrepresentation. Local 1099, International Association of Fire Fighters, supra. Submission of permissive subjects to the fact-finder over the timely objection of the other party constitutes a breach of the duty to participate in good faith in fact-finding proceedings in the case of police and firefighters. Local 1099, International Association of Fire Fighters, supra.

Where an employer refuses to comply with an arbitrator's award and forces other employees to file parallel grievances, the employer violates Section 10(a)(6). But the employer may in good faith contend that the fact situation in the second grievance is not covered by the earlier award. City of Boston, 2 MLC 1331 (1976).

Section 9A. Strike Investigations

Section 9A (a) prohibits public employees and employee organizations from striking or inducing or encouraging work stoppages by public employees. Under Art. IV, Section 3 of the Commission's rules, when a strike occurs or is about to occur, a public employer may petition for a strike investigation. The petition must identify the parties allegedly in violation of Section 9A(a), and must contain certain other information needed by the Commission to carry out an investigation. Upon receipt of a proper petition, the Commission gives notice by telegram or other prompt means to interested parties. Pursuant to this notice, the Commission holds an investigatory proceeding at its offices. This proceeding is usually held within a day of the filing of the petition.

While the formal presentation of sworn testimony is often not necessary at the investigation, the petitioner must present facts sufficient for the Commission to conclude that a violation of Section 9A(a) has occurred. Alliance, AFSCME/SEIU, AFL-CIO, SI-29 (1976). Where material facts are disputed, the Commission agent may call for sworn testimony. If it concludes that a violation of Section 9A(a) has occurred, the Commission will issue an interim order directing the end of the work stoppage. The Commission's interim order may also address some of the issues underlying the work stoppage, especially where related prohibited practice charges are involved, and require the parties to participate in accelerated bargaining, mediation or factfinding.

In Beverly Police Benevolent Association, 3 MLC 1229 (1976), the Commission concluded that police officers did not violate Section 9A(a) where they refused to work overtime. Their collective bargaining agreement specified that overtime was voluntary, and the refused overtime was non-emergency in nature. Where overtime is required by contract or is emergency in nature, concerted refusal to work such overtime constitute a 9A(a) violation. Town of Arlington, 3 MLC 1276 (1976).

Section 10 Prohibited Practices

Employer Prohibited Practices

Section 10(a)(1) makes it unlawful to interfere with, restrain or coerce an employee in the exercise of any right under the Law. Since the typical 10(a)(1) violation occurs when an employee's rights under section 2 are infringed the reader is referred to the discussion of section 2 of the Law.

Section 10(a)(2) makes it a prohibited practice to dominate, interfere or assist in the formation, existence or administration of any employee organization. To enter a stipulation with a challenging union that the incumbent's contract would be continued while its decertification petition was pending was a prohibited practice, even when executed in the interest of maintaining labor stability. City of Worcester, 1 MLC 1265 (1975). An employer was found to be in violation of section 10(a)(2) where it refused to bargain over certain subjects with a union representing one unit of employees, but bargained over the same subjects with a union representing another unit of employees. Town of Natick, 2 MLC 1149 (1975).

Section 10(a)(3) provides that an employer may not discriminate in regard to hiring, tenure or any term or condition of employment to encourage or discourage membership in any employee organization. This provision extends to all concerted, protected activity. Town of Somerset, MUP-2363, 3 MLC ___ (1977). An employer's action will be viewed as discriminatory if it is motivated either in whole or in part by an employee's protected activity. Ronald J. Murphy, 1 MLC 1271 (1975). The burden of establishing a violation by a preponderance of the evidence rests upon the charging party. Town of Dennis, 3 MLC 1014 (1976). In order to establish a prima facie case the charging party must offer evidence tending to prove the following essential elements: some adverse action taken by the employer; union or other protected activity; employer knowledge of the activity; employer motivation to penalize or discourage union activity. Town of Somerset, MUP-2363, 3 MLC ___ (1977). Once the aggrieved employee has established a prima facie case, the burden shifts to the employer to show that

he was not motivated by a discriminatory purpose but by a "nondiscriminatory business justification." Town of Tewksbury, 2 MLC 1158 (1975); Town of Sharon, 2 MLC 1205 (1975).

The burden of establishing improper motivation can be satisfied by circumstantial evidence and the reasonable inferences drawn therefrom. Harwich School Committee, 2 MLC 1095 (1975); Town of Somerset, MUP-2363, 3 MLC ___ (1977). Factors considered in determining the existence of improper motivation include: timing of the discharge coincidentally with the protected activity, Ronald J. Murphy, 1 MLC 1271 (1975); visibility of the employee in his or her support of the union, Town of Wareham, 3 MLC 1334 (1976); abruptness of the discharge; the employer's general hostility toward the union or toward concerted activity, Ronald J. Murphy, 1 MLC 1271 (1975); inconsistent or shifting reasons for the discharge or other discipline, Mt. Wachusett Community College, 1 MLC 1496 (1975); sudden resurrection of previously condoned transgressions, Town of Sharon, 2 MLC 1205 (1975); staleness of charges, Town of Halifax, 1 MLC 1486 (1975); surveillance and compilation of information concerning the employee, Town of Sharon, 2 MLC 1205 (1975); comparative treatment; triviality of reasons for discharge, Town of Wareham, 3 MLC 1334 (1976); unwarranted severity of penalty; prior work record, Town of Sharon, 2 MLC 1205 (1975).

The inference that one employee is unlawfully discharged is not necessarily rebutted by evidence that the employer did not discriminate against another employee who also actively engaged in protected activity. Town of Halifax, 1 MLC 1486 (1975). It is not discriminatory for an employer to transfer an employee to another shift to permit the employee to perform a more skilled job commensurate with his or her skills. County of Worcester, 3 MLC 1154 (1976). Termination of employees under a comparative rating system was held to be lawful even though the employees were active in union affairs, where there was an absence of discrimination in the rating process. Town of Dennis, 3 MLC 1014 (1976).

Section 10(a)(4) makes it a prohibited practice for a public employer to discharge or otherwise discriminate against an employee because he or she has signed or filed an affidavit, petition or complaint or given testimony under

the Law or because he or she has formed, joined or chosen to be represented by an employee organization. In Town of Wareham, 3 MLC 1334 (1976), the Board of Sewer Commissioners was held to be in violation of section 10(a)(4) for discharging one employee upon his stated intention of pursuing redress of his grievances and another for giving testimony at the Commission.

An employer may not condition an employee's promotion on the union's willingness to eliminate the position from the previously certified bargaining unit. Town of Swansea, 3 MLC 1484 (1977).

Section 10(a)(5) provides that it is a prohibited practice for an employer to refuse to bargain in good faith as required in Section 6. This duty to bargain in good faith is discussed under Section 6. supra.

Section 10(a)(6) is similarly discussed under Section 9, supra.

Union Prohibited Practices

Section 10(b)(1) makes it a prohibited practice for the employee organization to interfere with, restrain or coerce any employer or employee in the exercise of any right guaranteed under the Law. It is the union counterpart of Section 10(a)(1). Section 10(b)(1), in relation to Section 5, makes it a prohibited practice for the union to fail "to be responsible for representing the interests of all such employees (in the bargaining unit) without discrimination and without regard to employee organization membership". See Section 5, supra.

Section 11 Complaints of Prohibited Practices

This section specifies the procedures for processing complaints of prohibited practices, and grants the Commission authority to issue appropriate remedial orders.

Commission Procedures

The allegations in a complaint filed under Section 4 need not conform to the technical rules of pleading; the complaint is legally sufficient if it enables the respondent to understand the issues raised so that it can prepare its defense. Burlington School Committee, 1 MLC 1179 (1974).

Section 4 and Section 11 of the Law provide that a hearing conducted under the Act may be designated as an Expedited Hearing, in which case the hearing may be conducted and decided by any member or agent of the Commission. Such Expedited Hearings are designated to relieve the crowded docket of the agency. These expedited proceedings are recorded by tape rather than by stenographic means. A Hearing Officer's order becomes final and binding unless review by the Commission is requested within ten days. A party's due process rights are not per se violated because the Commission reviews sound recordings of an Expedited Hearing instead of written records. But the recordings must be sufficiently clear to make intelligible the testimony of the witnesses. Town of Sharon, 3 MLC 1052 (1976).

Review of Hearing Officer Decisions

The Commission has adopted the following procedures for review of a hearing officer's decision:

> The mere filing of a Notice of Appeal of a Hearing Officer's decision does not entitle the appellant to de novo review of the entire proceedings. If the appellant claims that errors of law were made by the Hearing Officer in reaching his or her decision, the timely filing of an appeal suffices to bring these issues before the Commission. Supplementary statements containing legal arguments on specific points will, of course, facilitate the Commission's deliberations and are always carefully considered.
>
> If the appellant claims that the Hearing Officer erred in factfinding, however, it must

> do more than simply file a general appeal to the Commission. In the absence of timely filed supplementary statements of the parties specifically directing the Commission's attention to alleged incorrect findings of fact, the Commission will accept the Hearing Officer's fact findings and limit its review to the Hearing Officer's conclusions of law. The reasons for this rule are obvious. The Hearing Officer has had the opportunity during a hearing to observe the demeanor of witnesses and draw conclusions as to the credibility. Moreover, the expedited hearing procedure was adopted by the Commission to speed the administrative processes. It became increasingly difficult for the Commission to expeditiously cope with its increasing caseload if the full Commission was required to find all of the facts in a given case. Now, to automatically review each factual determination made by the Hearing Officer, even those which may not actually be disputed by the parties, would result in precisely the diseconomy which the Commission was attempting to avoid in establishing the expedited hearing procedure. Therefore, we require that an appellant point out, by way of a timely-filed supplementary statement, the specific findings of fact which are claimed to be erroneous.
> Town of Dedham, 3 MLC 1332 (1976).

Rulings made by Hearing Officers during Expedited Hearings may not be appealed to the full Commission prior to the conclusion of the case before the Hearing Officer. Somerville School Committee, 2 MLC 1335 (1976).

When a complaint raises issues that were decided or may be decided through fair and regular arbitration proceedings agreed to by the parties, and where the decision is not repugnant to the Law, the Commission will defer to the arbitrator's decision. The Commission's policy is designed to favor arbitration, and to discourage forum shopping and relitigation of issues. This deferral policy will be applied in prohibited practice cases and, where appropriate, in representation cases. Boston School Committee, 1 MLC 1287 (1975); Cohasset School Committee, MUP-419 (6/19/73).

Remedies

The agency has broad powers to order relief if it finds that a prohibited practice has been committed. It may issue cease and desist orders, and it may order reinstatement with full back pay, preservation of records necessary to determine back pay awards, and posting of notices. City of Boston, 1 MLC 1271 (1975).

The Commission conducts supplemental proceedings to determine the amount of back pay due to a discharged employee. Back pay is determined by using the following formula: Net back pay = gross back pay - (interim earnings - expenses). In applying this formula, gross pay is to include such items as overtime, bonuses, vacation pay, holiday pay, retirement benefits, insurance benefits and tips. Interim earnings shall include only that income attributable to new employment. Thus, income from unemployment compensation, welfare or disability payments is not included in interim earnings. Six percent interest may be added to the back pay award. The employee's burden is merely to establish gross pay. The employer must establish interim earnings and other set-offs. The employee must mitigate damages by seeking suitable employment. Town of Townsend, 1 MLC 1450 (1975). The Commission may estimate back pay when exact computation is not possible, as long as there is sufficient evidence upon which to base a reasoned conclusion. The employer waives the right to contest any figures if it does not appear at the hearing on this matter. Town of Townsend, supra.

Where an employee was unlawfully discharged one day before he would have became a permanent civil service employee, the Commission ordered the employer to rehire the employee and grant him immediate status as a permanent employee. City of Boston, 3 MLC 1101 (1976). The Commission has also ordered the employer to remove from an unlawfully discharged employee's personnel records any reference to the discharge. City of Boston, supra.

In cases where there has been a refusal to bargain, the Commission ordinarily enters a bargaining order. Where the Commission finds that the employer has unilaterally altered wages, hours, terms or conditions of employment, the usual remedy has been to order a return to the status quo ante, along with a bargaining order. Town of Marblehead, 1 MLC 1140 (1974); City of Everett, 2 MLC 1471 (1976). In the latter case, the Commission also issued a make-whole order, directing the City to compensate firefighters at the rate of ten per cent of their ordinary wages for the hours they were required to perform floor patrol under an unlawful, unilaterally-

instituted change in working conditions. The Commission has also ordered an employer to extend to unit employees the benefits contained in those proposals that had been initialed by both negotiators, and later repudiated by the employer when the parties failed to agree upon other items. Middlesex County Commissioners, 3 MLC__(1977). Similarly, where an employer violated §10(a) (5) by withdrawal of a tentative agreement, after the union has already made concessions to make this tentative agreement, a Hearing Officer ordered the employer to return to the bargaining table upon the basis of the status quo before the tentative agreement was withdrawn by the employer. Spencer-East Brookfield Regional School Committee, 3 MLC 1400 (1977). In Boston School Committee, 1 MLC 1287 (1975), the employer was ordered to pay to the union the dues and agency service fees that normally would have accrued to the union absent the employer's unlawful refusal to bargain. In an analogous situation, a union was ordered to return to a unit employee, if she tendered her resignation from the union, the dues she had paid after she had been unlawfully encouraged to join the union. Local 285, SEIU, 3 MLC__, SUPL-2006 (1977).

Section 12 Agency Service Fee

Section 12 of the Law provides that public employees may be charged an agency service fee, as a condition of employment if the fee is required by a negotiated collective bargaining agreement ratified by a vote open to all members of the bargaining unit, and if the fee is proportional to the costs of negotiating and administering the collective bargaining agreement. The Commission has adopted regulations requiring financial disclosure by unions charging an agency service fee to non-members, and requiring that notice be given to all employees of votes to ratify agency fee agreements. Non-members may not be required to defray expenses for political or charitable contributions; social activities; educational programs unrelated to collective bargaining; fines or penalties assessed for illegal activities; organizing costs; or for health insurance, retirement or pension benefits. Rules and Regulations, Article IX.

CHART 1

HOW DID PUBLIC EMPLOYEE BARGAINING EVOLVE?

1935 Wagner Act (National Labor Relations Act)
Gave collective bargaining rights to private sector employees in interstate commerce.

1937 Massachusetts passes Chapter 150A, "Baby Wagner Act," extending bargaining rights to private sector employees within the commonwealth; Labor Relations Commission established.

1958 All public employees (except police officers) granted the right to join unions and to "present proposals" to public employers. Chapter 149, Section 178D.

1960 Employees of city or town could bargain provided that the law was accepted by the city or town. There were no specific procedures for elections nor the matter and method of bargaining Chapter 40, Section 4C.

1964 State employees given the right to bargain with respect to working conditions (but not wages). Chapter 149, Section 178F. However, it was not until 1965 when the Director of Personnel and Standardization promulgated the rules governing recognition of employee organizations and collective negotiations that bargaining took place.

1965 Municipal employees given the right to bargain about wages, hours, and terms and conditions of employment. Chapter 149, Sections 178G-N. This repealed Chapter 40, Section 4C.

1969 Mendonca Commission established by legislature to revise public employee bargaining laws.

1973 All public employees--state and municipal--extended full bargaining rights under comprehensive new statute, Chapter 150E; binding arbitration of interest disputes involving police and fire employees.

1974 Chapter 150E amended to strengthen enforcement powers of Labor Relations Commission; modify union unfair labor practices; modify standards for exclusion of managerial employees.

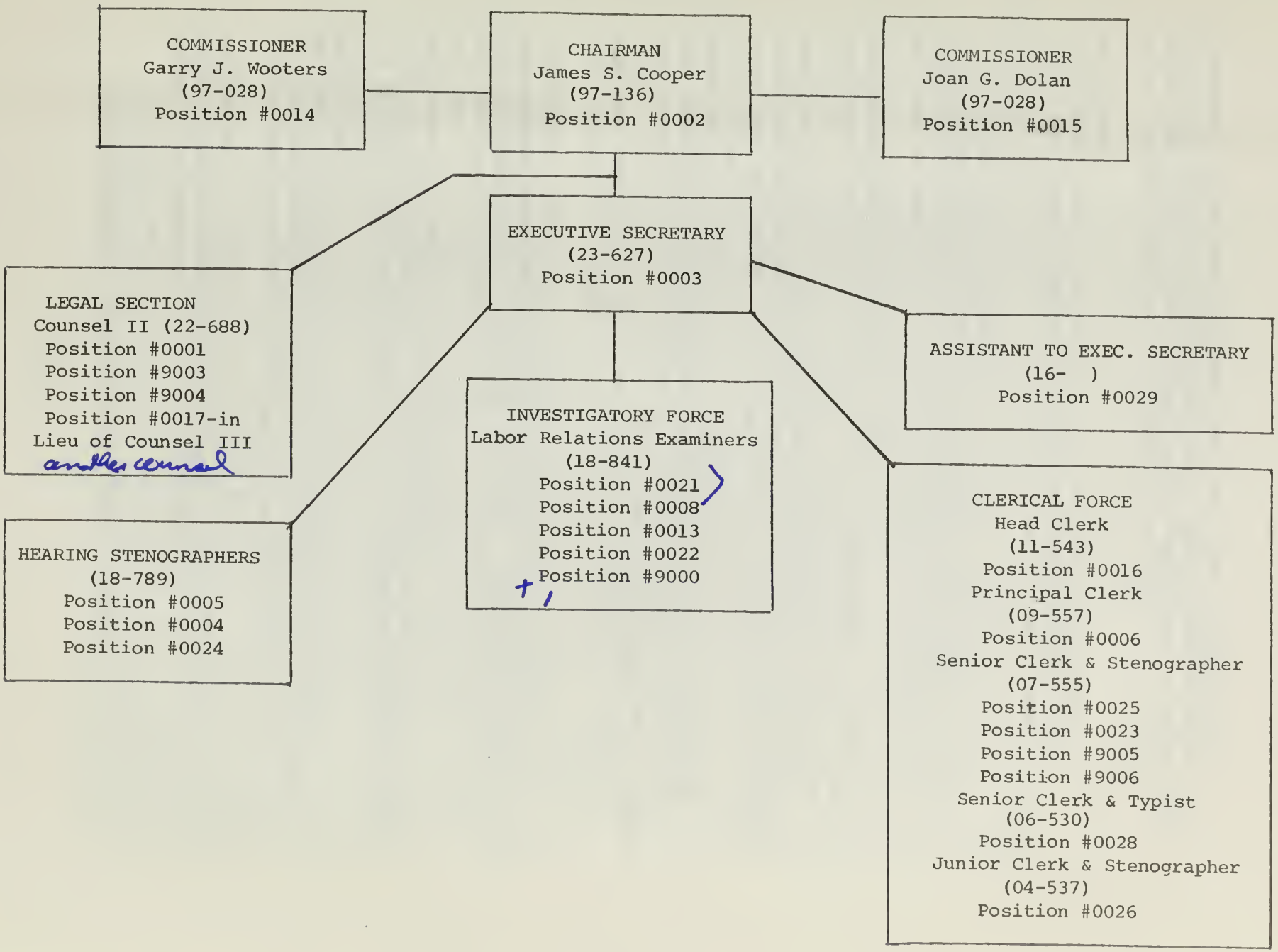
1975 MLRC issued standards for Appropriate Bargaining Units affecting fifty five thousand state employees in more than two thousand job classifications. Ten statewide units were created - five non-professional and five professional.

CHART 2

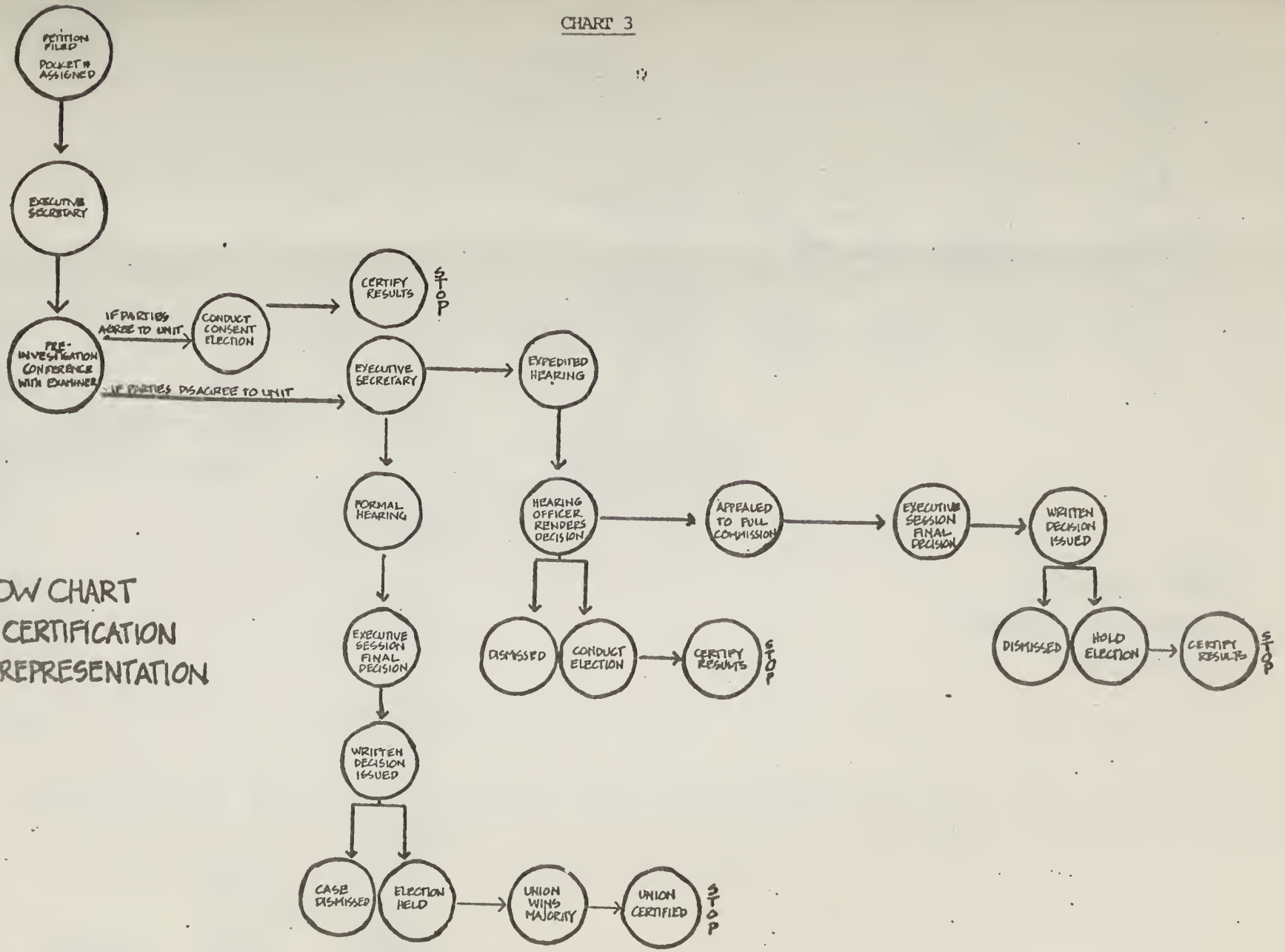
COMMONWEALTH OF MASSACHUSETTS

(Present Structure as of July 18, 1977

LABOR RELATIONS COMMISSION



FLOW CHART OF CERTIFICATION OF REPRESENTATION



FLOW CHART OF PROHIBITED PRACTICE COMPLAINTS

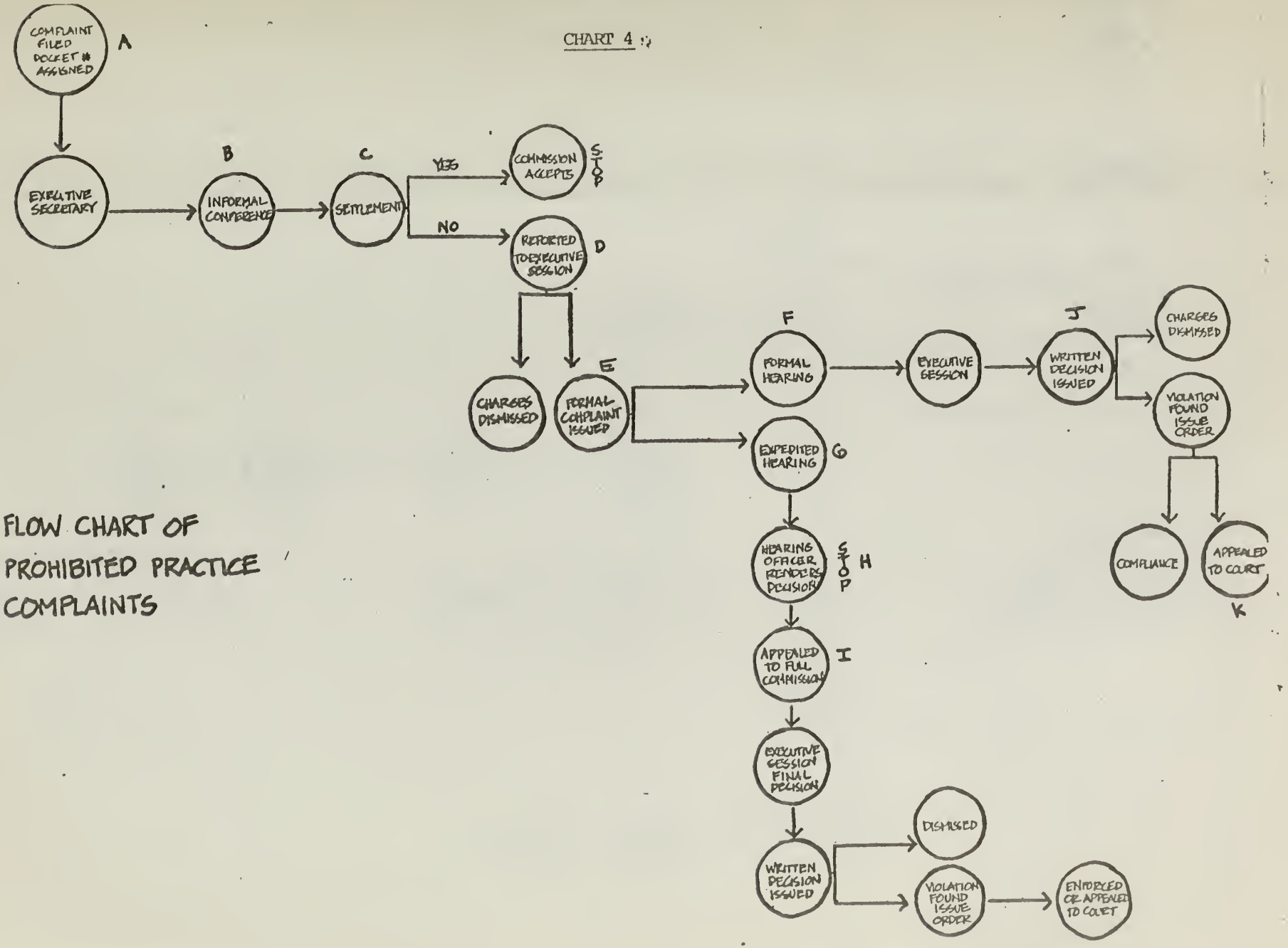


TABLE 1

TOTAL FILINGS

YEAR	77	76	75*	74*	73	72	71	66
Representation Cases								
(TOTAL)	249	304	400	297	287	299	201	144
Public	228	272	379	229	238	245	167	78
Private	21	32	21	68	49	54	34	66
Prohibited Practice Cases								
(TOTAL)	426	390	398	276	277	177	110	
Public	393	350	375	233	244	137	94	
Private	33	40	23	43	33	40	16	
Other**	26	42	17					
GRAND TOTAL	701	736	815	573	564	476	311	144

*Note: A moratorium on the processing of most state representation petitions was declared October 10, 1974-March 3, 1975 and a moratorium for all petitions took place in May-July 1, 1974.

**Strikes investigations and requests for binding arbitration.

TABLE 2

BREAKDOWN OF TOTAL FILINGS

CODE	MEANING	77	76
MCR:	Petition by or on behalf of Municipal Employees seeking certification or decertification of an Employee Organization.	156	194
CR:	Petition by or on behalf of Private Employees seeking certification or decertification of an Employee Organization.	21	32
SCR:	Petition by or on behalf of Employees of the Commonwealth seeking certification or decertification of an Employee Organization.	10	10
MCRE:	Municipal Employer seeks to resolve claim of representation by one or more Employee Organizations.		1
CAS:	Employee Organization or Employer seeks clarification or amendment of recognized or certified bargaining unit.	62	64
MUP:	Complaint filed by employee organization against Municipal Employer.	256	257
UP:	Complaint filed by employee organization against Private Employer.	32	32
MUPL:	Complaint filed by Municipal Employer or an individual against employee organization.	78	48
UPL:	Complaint filed by Private Employer against employee organization.	1	8
SUP:	Complaint filed by employee organization against the Commonwealth.	44	31
SUPL:	Complaint filed by the Commonwealth against an employee organization.	15	14
SI:	Petition filed by Employer requesting the Commission to investigate strike or strike threat by employees.	18	24
RBA:	Employer or employee organization requests the Commission to order Binding Arbitration.	8	17
TOTAL		701	732

TABLE 3

ELECTIONS

	FY 77	FY 76	FY 75	FY 74*	FY 73	FY 72	FY 71	FY 66
Total Elections	173	185	180	169	233	188	122	70

TABLE 4

TOTAL HEARINGS

	FY 77	FY 76	% Increase
Formal	114	96	+16%
Expedited	293	208	+29%
Informal	648	642	+ 1%
Other	35	27	+23%
Grand Total	1,090	973	+ 4%

TABLE 5

SUMMARY OF SECTION 9A PETITIONS
FOR FISCAL 1977

CASE	EMPLOYER	UNION	WORK STOPPAGE	COMMISSION ACTION
SI 32 7/1/76	City of Somerville	Somerville Municipal Employees Association	yes	-Commission order to cease strike and to factfinding led to settlement
SI 33 7/8/76	City of Chelsea	International Brotherhood of Teamsters, Local 380	yes	-Commission order to cease striking and commenc bargaining; compliance and settlement
SI 34 9/13/76	Worcester School Committee	Worcester Public School Custodians Association	yes	-Commission order to cease and desist -settlement
SI 35 9/15/76	Taunton Municipal Lighting Plant Commission	Utility Workers Union of America, Local 68	no	-no strike found -factfinding recommended
SI 36 9/23/76	Town of Walpole	Walpole Municipal Employees Association, Local 1957	overtime withheld	-settled in early stages at Commission
SI 37 9/28/76	City of Beverly	AFSCME, Council 41, Local 111	yes	-Commission order to cease strike and resume negotiations
SI 38 10/6/76	Boston School Committee	Boston Teachers Union	no	-settled in early stages at Commission

TABLE 5 (continued)

CASE	EMPLOYER	UNION	WORK STOPPAGE	COMMISSION ACTION
SI 39 10/18/76	Town of Yarmouth	Yarmouth Permanent Fire-fighters Association	no	(wouldn't perform certain duties) -Commission order to perform duties; compliance
SI 40 10/26/76	City of Beverly	Beverly Police Benevolent Association	overtime withheld	-no strike found
SI 41	Wilbraham School Committee	Wilbraham Education Association	whether there was a work stoppage is the issue to be determined by Commission	-remains pending before Commission
SI 42 11/12/76	Town of Arlington	AFSCME, Local 680	emergency overtime withheld	-strike found -compliance with Commission
SI 43 12/3/76	Town of Medford	Local 492, Building and Service Employees International Union (public works)	emergency overtime withheld	-Commission order to cease and desist -restraining order -compliance
SI 44 12/7/76	Town of Leominster	NAGE, Local RI-252 (public works)	emergency overtime withheld	-settled in initial stages at Commission
SI 45	Town of Winchester	Winchester Town Employees Association, Local 285	emergency overtime withheld	-Commission order to cease and desist and to mediation -compliance

TABLE 5 (continued)

CASE	EMPLOYER	UNION	WORK STOPPAGE	COMMISSION ACTION
SI 46 12/15/76	Town of Walpole	AFSCME, Local 1957	emergency over-time withheld	-Commission order to cease and desist and seek mediation -temporary restraining order obtained
SI 47 4/7/77	Trustees of State Colleges	Boston State College Faculty Federation, AFT, Local 1943, AFL-CIO	no	-settled
SI 48 4/21/77	Bellingham School Committee	Local 747, AFSCME, Council 93	yes	-ordered mediation
SI 49 4/26/77	City of Lynn	AFSCME, Local 193	no	-dismissed
SI 50 5/5/77	City of New Bedford	New Bedford Branch of Police Association	yes	-ordered to cease and desist
SI 51 5/16/77	Lawrence School Committee	Clerical Employees Assoc. of the Lawrence School Dept.	yes	-ordered to mediate

TABLE 6

CASES DISPOSED OF

	FY 77	FY 76
Total Cases Filed	701	736
Backlog from Previous Year	+390	+107
Subtotal	1,091	843
Cases Pending 6/30/77	-476	-390
Total Cases Disposed of This Year	615	453

TABLE 7

STATUS OF OPEN CASES

Completed Expedited Hearing, and Awaiting Decision	53
Hearing Officer's Decision Appealed to full Commission	20
Formal Hearing and Transcript Completed, Awaiting Decision	37
Formal Hearing Scheduled	112
Under Investigation	181
Election Scheduled	18
Representation Cases Under Investigation	42
Requests for Binding Arbitration	13

TABLE 8

AVERAGE ATTORNEY TIME SPENT PER CASE*

TIME SPENT	PROHIBITED PRACTICE	REPRESENTATION
Preparing for Informal Conference	65 min.	36 min.
In Informal Conference	76 min.	100 min.
After Informal, including Preparation for Executive Session	78 min.	38 min.
Writing a Complaint	90 min.	--
Preparing for Expedited Hearing	96 min.	53 min.
Preparing for a Formal Hearing	113 min.	--
Time in Expedited Hearing	6 hrs.	6 hrs.
Time in Formal Hearing	6 hrs.	--
Listening to Tapes of Expedited Hearings	6.5 hrs.	2.5 hrs.
Reading Transcripts of Formal Hearings	5.5 hrs.	--
Researching	7-8 hrs.	7-8 hrs.
Discussing	2.5 hrs.	2.5 hrs.
Writing Decision	17 hrs.	11 hrs.
Preparing Facts of Hearing Officer's Decision for full Commission	1 hr.	1 hr.
TOTAL	61 hrs.	35 hrs.

*These averages were reached by surveying the staff.